Filed 2/13/19 M.G. v. Super. Ct. CA4/3

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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| M.G.,<br><br>Petitioner,<br><br>v.<br><br>THE SUPERIOR COURT OF ORANGE COUNTY,<br><br>Respondent;<br><br>ORANGE COUNTY SOCIAL SERVICES AGENCY et al.,<br><br>Real Parties in Interest. | G057002<br><br>(Super. Ct. No. 17DP0773)<br><br>O P I N I O N |

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Gary L. Moorhead, Judge. Petition denied.

Sharon Petrosino, Public Defender, Kenneth Norelli and Brian T. Okamoto, Deputy Public Defenders for Petitioner.

Leon J. Page, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel for Real Party in Interest, Orange County Social Services Agency.

Cara Bender for Real Party in Interest, the Minor.

No appearance for Respondent.

* * *

In this petition, the mother contends substantial evidence did not support the juvenile court's order to set this case for a hearing pursuant to Welfare and Institutions Code section 366.26, and that she was deprived of reasonable services. (All further undesignated statutory references are to this code.) Petition denied.

## I

## FACTS

In July 2017, a senior social worker requested a protective custody warrant to remove C.G. (the minor), born in 2013, from the care of the mother, M.G., the petitioner. The request states the minor's primary care physician "is in opinion that the mother, suffers from Munchausen Syndrome by Proxy . . . with the child. The mother has exposed the child to excessive medical visits as evidence [*sic*] by PHN[1] Bailey's report stating that the mother brings the child in for multiple visits with same complaints and insisting that the child needs treatments. Per PHN Bailey's report, multiple doctors have expressed that there is nothing medically wrong with the child. The mother continues to put the child through unnecessary treatment and medical tests which poses risk for the child's physical and mental health. [¶] The mother's history shows that a previous child was removed from her care in 2010 by Irvine Police Department due to excess medical exams, medial [*sic*] visits, and child abuse investigations; the child was three years old. . . . The mother failed to reunify with this child. [¶] It is Social Services opinion that the mother is in denial of a severe mental health illness and is putting the child at risk as evidence [*sic*] by the excess doctor visits with the child. The mother has made efforts in the past to evade Social Services. In a prior investigation in January 2017, the mother did not make herself available to the Social Worker. Per the mother's current and previous CalWORKs Worker, the mother is paranoid and hesitant to provide

[1] These initials are not explained. We assume they mean Public Health Nurse.

information on her whereabouts. Social Services is in fear that the mother will abscond with the child when she becomes aware of the allegations in efforts to prevent removal of the child. SSW Glaser has made several attempts to make contact with the mother and child in-person and by phone but has not been successful." A protected custody warrant was granted by the juvenile court on July 13, 2017. The minor "was placed into protective" custody that same day.

The juvenile dependency petition states: "The mother has subjected the child to numerous unnecessary medical examinations. From October 15, 2016 through June 30, 2017, the mother had the child seen by medical professionals on at least 30 separate occasions. Multiple medical professionals reported that there was nothing medically wrong with the child and the exams were generally normal. Competent medical professionals opine the mother's behavior constitutes medical child abuse." Regarding the other child who was removed from the mother, a social worker's report states that child was taken to at least 123 unnecessary medical examinations "to check for sexual or physical abuse, none of which have been substantiated."

After removal, the minor's medical records were reviewed by Sandra Murray, M.D., at the University of California, Irvine. The doctor's report states: "[The minor] is now 3 years 10 months old. In the records I reviewed [the minor] had: 45 visits to one pediatrician (11-4-14 to 5-30-17), 3 visits to another pediatrician (6-12-5-30-17), 10 ED visits (9-26-14 to 6-26-17), and 12 specialists visits (12-9-14 to 7-5-17). There was also an unknown number of other visits that are referred to in the notes. This is an extraordinarily large number of visits for a healthy child." The doctor states the minor had been diagnosed with "normal childhood viral infections: upper respiratory illness . . . , hand foot and mouth disease, viral rashes, and ear infections," and that "[t]hese are very common in all children." The medical records state the minor "has been on a variety of allergy medications." The minor had also been diagnosed with asthma and was on albuterol and steroids for that condition, but notes that "[t]his diagnosis

appears to have been made based solely on symptoms reported by his mother." The minor also received speech therapy for four months. The doctor concluded: "The excessive medical intervention into [the minor's] life meets the definition of medical child abuse." The doctor added that medical child abuse "can result in serious physical injury, detrimental mental health issues, and sometimes death."

Regarding the mother's taking the minor for medical examinations after removal, the caregiver reported to Orange County Social Services Agency (SSA) that on December 31, 2017, the mother took the minor to the emergency room because he was coughing and throwing up. The caregiver went to the emergency room and reported the doctor said the minor was fine. On April 8, 2018, the mother again took the minor to the emergency room. The mother told SSA that she was instructed by Hoag Hospital to follow up with a pediatrician for "eyelid lesion and Allergic Rhinitis." On April 20, 2018, the minor was seen at a dermatology facility for warts. The child was treated and the mother was "advised of blistering reaction after treatment." She was told to apply Vaseline to recovering areas and to give Baby Tylenol for pain. The mother was warned to adhere to the prescribed treatment because the "condition could easily spread." On May 12, 2018, while the mother was at the hospital for herself, she "asked the doctor to look at [the minor] and hear [the minor's] breathing and cough." The doctor gave her a prescription for the minor's cough.

On June 6, 2018, the minor's counsel requested the juvenile court to change its visitation order from unsupervised to supervised visitation, stating that the "[m]other now believes and insists that the minor has Sepsis. The mother has again subjected the minor to unnecessary doctor appointments and examinations during unsupervised visitation." On June 8, 2018, the court made the following order: "Court orders mother's visitations be supervised until the next court date of 7-9-18. Mother is not authorized to take the child to the doctor or hospital unless it is a medical emergency. SSA is ordered to evaluate all of mother's concerns regarding minor's symptoms and need for

pediatrician." On July 9, 2018, the court ordered the mother's visitations supervised and also ordered SSA to consult with the mother's therapist after 90 days to determine if her visits should return to unsupervised.

On September 19, 2018, the minor's caregiver informed SSA the child was worn out with the visitation schedule, and that "the child has begun acting out and punching members of the family." The minor's angry behavior continued into mid-October. An employee at the visitation center also observed the minor hitting the mother.

At the 12-month review hearing, the juvenile court heard from numerous witnesses. After argument by counsel for all parties, the court provided a lengthy and thoughtful statement, explaining its reasons for ordering no further reunification services and setting a hearing pursuant to section 366.26.

"Historically, it is significant that this mother was involved in a previous dependency case involving another child and half sibling to [the minor] and that the reasons for that matter were similar to [the minor's] case. [¶] In 2011, that court terminated mother's family reunification services to a son who had been medically abused by extensive, repeated, and unnecessary medical examinations. Competent medical evidence has opined that the mother engaged in this same conduct when this child was brought in to dependency at age three."

The juvenile court continued: "What is compelling to this court, however, is what her therapists have stated. Her first therapist who treated her from August 21, 2017, through February 20, 2018, and who also noted that she was cooperative and never missed an appointment, reported no progress regarding the therapy goal of addressing issues that brought this case before the court. [¶] Her subsequent and current therapist who did not testify or prepare a report for this hearing has reported that as of June 9, 2018, both she and the mother continued to talk about her not going to doctor appointments with [the minor] during her visits with [the minor]. The therapist reported that in their weekly sessions, she also agrees – the mother also agrees not to take [the

minor] to the doctors. But when on her own, she thinks differently. It's, quote, the way her mind processes, close quote. On August 23, 2018, that same therapist also noted, quote, I see progress although it is a slow progress, close quote. [¶] In reading all the reports from the beginning of this year up until the first 12-month review report was issued for the September 4th, 2018 hearing, it is clear that the mother continues to obsess and focus on the child's need for medical attention. [¶] Whether this is Munchausen by Proxy or not, it is equally clear to the court that the mother has not made substantial progress with her therapy that would enable her to safely parent this five-year-old child. Her testimony that she currently believes her child should not have been removed from her care reinforces my opinion that no substantial progress has been made."

The juvenile court concluded: "I find that reasonable services have been provided or offered to the mother and do not believe that the missed visitation constitutes unreasonable services under these circumstances. [¶] The court orders that a hearing be held within 120 days pursuant to section 366.26, and orders the agency to prepare an assessment and submit it to all counsel at least ten days prior to that .26 hearing." The minute order of the same day states: "Court finds . . . by a preponderance of the evidence return of the child to parents would create substantial risk of detriment to the safety, protection, or physical or emotion well-being of the child."

Pursuant to California Rules of Court, rule 8.450, the mother filed a petition for this court to review the juvenile court's order setting a hearing under section 366.26. She contends that substantial evidence does not support the court's finding that returning the child to the mother would create a substantial risk of detriment, alternatively that the court should have continued her reunification services.

After the initial briefing, this court sent eight questions[2] to the parties. County Counsel and the mother's counsel each responded in a letter brief. Minor's counsel joined in County Counsel's brief.

[2] "On the court's own motion and for good cause . . . . The parties are ordered to file supplemental letter briefs answering the following questions . . .:
"1. At any time after the minor was removed from the mother, did any expert opine that return of the minor to the mother would create a risk of detriment to the minor, based on actions by the mother after the minor was removed? Discuss the significance of any such evidence.
"2. Other than any preremoval actions of the mother, was there evidence before the juvenile court that return of the minor to the mother would create a risk of detriment to the minor, based on actions by the mother after the minor was removed? Discuss the significance of any such evidence.
"3. After Dr. Vu reported to SSA: "I can tell that [the mother] would require an evaluation from a Forensic Psychiatrist, not an outpatient clinic like ourselves," was the mother offered any psychiatric services?
"4. Regarding the mother's taking the minor for medical examinations after removal, on December 31, 2017, April 7, 2018 [when the doctor provided a diagnosis and advised a follow-up visit], April 20, 2018 [when the minor was given treatment for a skin condition] and May 12, 2018 [when the doctor wrote a prescription for the minor's condition], state all evidence in the record relating to the appropriateness or inappropriateness of the mother's actions.
"5. What significance, if any, should be given to the August 23, 2018 report of the mother's therapist: "I see progress although it is slow progress."?
"6. Did any expert opine the mother suffers from Munchausen Syndrome? If so, what were the reasons given for that diagnosis?
"7. Other than Dr. Murray's opinion the mother was imposing medical child abuse on the minor based on the mother's preremoval actions of taking the minor for excessive medical treatment, did any expert give the same or similar opinion based on the mother's postremoval actions?
"8. Did any expert state there would be detriment to the minor if services to the mother were continued?"

II

DISCUSSION

*Substantial Evidence*

At the 12-month review hearing, "[a]fter considering the relevant and admissible evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.21, subd. (f)(1).) In her petition, the mother contends substantial evidence does not support the juvenile court's order to set a hearing under section 366.26.

In reviewing for substantial evidence, "[w]e do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court's order, and affirm . . . even if other evidence supports a contrary conclusion." (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333.)

We have examined the entire record. Under the circumstances we find in this record, we conclude substantial evidence supports the juvenile court's order.

*Discontinuance of Reunification Services*

At the 12-month review hearing, the juvenile court shall "determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian." (§ 366.21, subd. (f)(1)(A).)

The adequacy of "SSA's efforts are judged according to the circumstances of each case." (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) "[I]n

most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

Here, the juvenile court granted many hours of visitation to the mother. But when the mother kept taking the minor to unnecessary medical appointments, the court's order was changed from unsupervised to supervised visits. The court closely monitored the situation. Under these circumstances, we find the services were designed to aid the mother to overcome the problems that led to the initial removal and they were reasonable.

## III

## DISPOSITION

The petition is denied.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.